IN THE

Supreme Court of the United States.

OCTOBER TERM, 1905

GEORGE W. McCLELLAN as Executor, etc., et al,
Appellants,
vs.
SUMNER WALLACE, et al,
Appellees.

General No. 19,656.
Term No. 195,

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF AND ARGUMENT FOR APPELLANTS.

The Bill, the Amended Bill, the Answer, the Facts, and the Assignments of Error in this appeal are identical with those in the case of Peter Frenzer, te al, vs. Sumner Wallace, et al, Term No. 192, General No. 19,653.

The writer of this brief has assisted in the preparation of the brief in The Frenzer case. For the convenience of the Court, and to avoid a repetition, these Appellants, with the consent of Mr. Howard B. Smith, adopt the brief of Frenzer, et al

as and for their brief, but in so doing make the following changes, to-wit:

Page 8 of the Frenzer brief: On the 14th day of June, 1901, the defendants, Robert McClellan (since revived in the name of George W. McClellan as Executor of the Estate of Robert H. McClellan, deceased, p. 368), R. L. Brownlee, Caroline Carpenter, George Marples and J. H. Hawkins (since revived in the name of George S. Hawkins and John A. Kitchcart as Executors of the Last Will and Testament of J. H. Hawkins, deceased p. 437) filed their joint and several answer to the amended bill of complaint (p. 92.)

Page 12 of the Frenzer brief: The amounts adjudged due complainant and the Union respectively were as follows, to-wit: From George W. McClellan, Executor, etc., $1,163.00, and $3,689.50; from R. L. Brownlee $581.50 and $1,849.25; from Caroline Carpenter $418.69 and $1,331.46; from George Marples $348.90 and $1,109.55; and from J. H. Hawkins $581.50 and $1,849.25.

Thereupon petitions for appeal (p. 373), and Assignments of Error (p. 369), were filed, the appeals were duly allowed by the court (p. 374), bonds were given and duly approved by the court (pp. 375-376), a præcipe for a transcript (p. 378) of the record was served and filed on July 1, 1903, and the record was filed in the Circuit Court of Appeals on July 20, 1903.

The decree of the Circuit Court was affirmed by the Circuit Court of Appeals on December 8, 1904 (pp. 390, 435) and these appellants severally prayed an appeal (p. 438) and assigned errors (p. 440), and their appeals were allowed on February 6, 1905 (p. 444), and the record duly filed in this court on March 13, 1905.

Page 76 of the Frenzer brief: Of these appellants, there

were present at the three meetings above mentioned, by proxy, the following, to-wit: On January 14, 1896, R. L. Brownlee, Caroline Carpenter, John H. Hawkins and George Marples; On February 25, 1896, Caroline Carpenter, R. H. McClellan and George Marples; On January 12, 1897, R. L. Brownlee, Caroline Carpenter, R. H. McClellan, and George Marples.

Page 80 of the Frenzer brief: Of these appellants, only George Marples signed exhibit 25. (Record, p. 237.)

Solicitor and of Counsel for Appellants.

January, 1906.